

HOUSE BILL NO. 353

INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING A PROCEDURE TO SECURE PRIVATE ROAD ACCESS TO AGRICULTURAL LAND AND TIMBER LAND IN ADDITION TO RESIDENCES AND FARMS; AND AMENDING SECTIONS 70-30-102 AND 70-30-107, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 70-30-102, MCA, is amended to read:

"70-30-102. Public uses enumerated. Subject to the provisions of this chapter, the right of eminent domain may be exercised for the following public uses:

- (1) all public uses authorized by the government of the United States;
- (2) public buildings and grounds for the use of the state and all other public uses authorized by the legislature of the state;
- (3) public buildings and grounds for the use of any county, city, town, or school district;
- (4) canals, aqueducts, flumes, ditches, or pipes conducting water, heat, or gas for the use of the inhabitants of any county, city, or town;
- (5) projects to raise the banks of streams, remove obstructions from streambanks, and widen, deepen, or straighten stream channels;
- (6) water and water supply systems as provided in Title 7, chapter 13, part 44;
- (7) roads, streets, alleys, controlled-access facilities, and all other public uses for the benefit of a county, city, or town or the inhabitants of a county, city, or town;
- (8) acquisition of road-building material as provided in 7-14-2123;
- (9) stock lanes as provided in 7-14-2621;
- (10) parking areas as provided in 7-14-4501 and 7-14-4622;
- (11) airport and landing field purposes as provided in 7-14-4801, 67-2-301, 67-5-202, 67-6-301, and Title 67, chapters 10 and 11;
- (12) urban renewal projects as provided in Title 7, chapter 15, parts 42 and 43;
- (13) housing authority purposes as provided in Title 7, chapter 15, part 44;

- 1 (14) county recreational and cultural purposes as provided in 7-16-2105;
- 2 (15) city or town athletic fields and civic stadiums as provided in 7-16-4106;
- 3 (16) county cemetery purposes as provided in 7-35-2201, cemetery association purposes as provided
- 4 in 35-20-104, and state veterans' cemetery purposes as provided in 10-2-604;
- 5 (17) preservation of historical or archaeological sites as provided in 23-1-102 and 87-1-209(2);
- 6 (18) public assistance purposes as provided in 53-2-201;
- 7 (19) highway purposes as provided in 60-4-103 and 60-4-104;
- 8 (20) common carrier pipelines as provided in 69-13-104;
- 9 (21) water supply, water transportation, and water treatment systems as provided in 75-6-313;
- 10 (22) mitigation of the release or threatened release of a hazardous or deleterious substance as provided
- 11 in 75-10-720;
- 12 (23) the acquisition of nonconforming outdoor advertising as provided in 75-15-123;
- 13 (24) screening for or the relocation or removal of junkyards, motor vehicle graveyards, motor vehicle
- 14 wrecking facilities, garbage dumps, and sanitary landfills as provided in 75-15-223;
- 15 (25) water conservation and flood control projects as provided in 76-5-1108;
- 16 (26) acquisition of natural areas as provided in 76-12-108;
- 17 (27) acquisition of water rights for the natural flow of water as provided in 85-1-204;
- 18 (28) property and water rights necessary for waterworks as provided in 85-1-209 and 85-7-1904;
- 19 (29) conservancy district purposes as provided in 85-9-410;
- 20 (30) wharves, docks, piers, chutes, booms, ferries, bridges, private roads, plank and turnpike roads, and
- 21 railroads;
- 22 (31) canals, ditches, flumes, aqueducts, and pipes for:
- 23 (a) supplying mines, mills, and smelters for the reduction of ores;
- 24 (b) supplying farming neighborhoods with water and drainage;
- 25 (c) reclaiming lands; and
- 26 (d) floating logs and lumber on streams that are not navigable;
- 27 (32) sites for reservoirs necessary for collecting and storing water. However, reservoir sites must
- 28 possess a public use demonstrable to the district court as the highest and best use of the land.
- 29 (33) roads, tunnels, and dumping places for working mines, mills, or smelters for the reduction of ores;
- 30 (34) outlets, natural or otherwise, for the flow, deposit, or conduct of tailings or refuse matter from mines,

1 mills, and smelters for the reduction of ores;

2 (35) an occupancy in common by the owners or the possessors of different mines of any place for the
3 flow, deposit, or conduct of tailings or refuse matter from their several mines, mills, or smelters for reduction of
4 ores and sites for reservoirs necessary for collecting and storing water for the mines, mills, or smelters. However,
5 the reservoir sites must possess a public use demonstrable to the district court as the highest and best use of
6 the land.

7 (36) private roads leading from highways to residences, ~~or~~ farms, agricultural land, or timber land;

8 (37) telephone or electrical energy lines;

9 (38) telegraph lines;

10 (39) sewerage of any:

11 (a) county, city, or town or any subdivision of a county, city, or town, whether incorporated or
12 unincorporated;

13 (b) settlement consisting of not less than 10 families; or

14 (c) public buildings belonging to the state or to any college or university;

15 (40) tramway lines;

16 (41) logging railways;

17 (42) temporary logging roads and banking grounds for the transportation of logs and timber products
18 to public streams, lakes, mills, railroads, or highways for a time that the court or judge may determine. However,
19 the grounds of state institutions may not be used for this purpose.

20 (43) underground reservoirs suitable for storage of natural gas;

21 (44) projects to mine and extract ores, metals, or minerals owned by the condemnor located beneath
22 or upon the surface of property where the title to the surface vests in others. However, the use of the surface
23 of property for strip mining or open-pit mining of coal (i.e., any mining method or process in which the strata or
24 overburden is removed or displaced in order to extract the coal) is not a public use, and eminent domain may
25 not be exercised for this purpose.

26 (45) projects to restore and reclaim lands that were strip mined or underground mined for coal and not
27 reclaimed in accordance with Title 82, chapter 4, part 2, and to abate or control adverse affects of strip or
28 underground mining on those lands."

29
30 **Section 2.** Section 70-30-107, MCA, is amended to read:

"70-30-107. Private roads. Private roads may be opened in the manner prescribed by this chapter, but in every case the necessity route of the road must be determined by the county commissioners of the county in which the road will be located or by a board authorized by the commissioners to perform that function. Consideration of factors including the length of the road, estimated costs of construction, and use of historic travel routes must be used to minimize costs and impacts. ~~and the~~ The amount of all damage to be sustained by the opening of the road must be first determined by a jury, and the amount of damages, together with the expenses of the proceeding, must be paid by the person to be benefited. The costs incurred by a board of county commissioners are considered an expense of the proceeding to open a private road."

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